

# In the Supreme Court of the United States

OCTOBER TERM, 1924

COLLEGE POINT BOAT CORPORATION,	}	No. 121
Appellant		
v.		
THE UNITED STATES		

APPEAL FROM THE COURT OF CLAIMS

## BRIEF ON BEHALF OF THE UNITED STATES

### STATEMENT OF THE CASE

This is an appeal from a judgment of the Court of Claims awarding the plaintiff-appellant the sum of \$5,112.42, upon findings of fact made after trial of the issues.

### THE FACTS

The plaintiff on October 25, 1918, made a contract with the Navy Department to furnish 2,000 collision mats, being a part of the equipment of ships and intended for use in stopping leaks in a ship's hull. Within less than three weeks the Armistice came and none of the mats was furnished.

On December 3, 1918, arrangement was made for a conference to be held on December 6th, and at this conference plaintiff was informed that on account of

the signing of the Armistice and the probability of early termination of the war the mats would not be needed, and that the Department desired to negotiate with regard to a cancellation of the contract. It also suggested that plaintiff stop operations for the performance of the contract, and submit a proposition as to the basis upon which a cancellation would be satisfactory. (Fourth Finding, page 22.)

Following the conference on December 6, 1918, the plaintiff stopped operations, and on December 30th wrote to the Navy Department a proposition as the basis of a settlement. (Fifth Finding, page 22.)

On February 10, 1919, an agreement was entered into between the plaintiff and the defendant by which the defendant purchased from the plaintiff at the cost thereof to the plaintiff \$44,066.07 worth of materials which had been purchased by plaintiff for use in the performance of the contract or on orders for which the plaintiff could not procure cancellation. (Sixth Finding, page 26.)

There followed further negotiations, resulting in an offer by the Navy Department to pay to the plaintiff the sum of \$61,121.89, which included the \$44,066.07 already mentioned. Plaintiff refused this offer, claiming a right to prospective profits, but agreed to accept payment for materials purchased with the understanding that it would not impair its right to prosecute its claim for profits. (Seventh Finding, page 28.)

Thereupon an agreement was made by which the defendant paid to the plaintiff the further sum of \$10,225.60, the value of additional material which had been purchased by the plaintiff for work upon the contract.

The net result was a settlement between the parties of the entire matter, with the exception of the claim for future profits and several small items, which amount to an aggregate of \$5,112.42, and for which the Court of Claims has given judgment.

The sole point to which the brief of appellant is directed is that it is entitled to recover prospective profits. The Court of Claims found them to be \$123,980.00 (Tenth Finding, page 28), but refused to allow recovery therefor.

#### ARGUMENT

**The plaintiff is not entitled to recover, upon cancellation of its contract, its anticipated profits**

The Court of Claims held that the question of the right to recover anticipated profits was settled by this Court in the case of *Russell Motor Car Company v. United States* (261 U. S. 514). There is no substantial difference between that case and the case at bar. The statute involved is the same—the Act of June 15, 1917, c. 29, 40 Stat. 182—empowering the President “to modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.” Mr. Justice Sutherland, delivering the opinion of the Court in that case, after referring to the fact that

the public interests demanded that cancellation be effected with respect to the material as called for under Contract 42877, for the reason that the same were no longer needed by the Navy.

The plaintiff accepted the terms of this proposition, except as to the item of anticipated profits and a few minor items. These negotiations and the action taken can have no other significance than a voluntary assent to the cancellation of the original contract.

The point that no tender was ever made of 75 per cent. of the amount due in accordance with the offer of the Navy Department dated February 26, 1919, needs no serious consideration. The total amount of the offer was the sum of \$61,121.89. The Findings show that prior thereto the Government had purchased and taken over from the plaintiff over \$44,000 worth of materials covered by the offer, and thereafter paid the plaintiff \$10,000 for additional materials, a total far in excess of 75 per cent. of the offer.

#### CONCLUSION

The judgment of the Court of Claims should be affirmed.

Respectfully submitted,

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ALFRED A. WHEAT,

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OCTOBER, 1924.

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